

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIM CARRUTH, :  
Plaintiff, :  
v. : Civil Action No. 18-CV-02061  
: :  
JAMES PATTERSON, SR. :  
Defendant. :  
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**DEFENDANTS' MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(1) AND 12(b)(6)  
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Defendant James Patterson, Sr., by and through his undersigned counsel, moves this Honorable Court to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and in support thereof state the following:

1. On August 28, 2017, Defendant purchased the property in fee simple known as 108 West Godfrey Avenue located in Philadelphia, Pennsylvania by Special Warranty Deed which was recorded on September 21, 2017. (See Motion Exhibit C, which is attached hereto and made a part hereof.)
2. The sale price was \$73,000, which was paid in full at the time of the sale. (See Motion Exhibit C at page 1.)
3. The seller of the property was Bank of America to whom the property was conveyed by deed from Jewell Williams, Sheriff of the County of Philadelphia, recorded on July 24, 2017. (See Motion Exhibit C at page 2.)

4. Plaintiff Carruth was an occupant of the subject premises.
5. On September 19, 2017, James L. Patterson, Sr., filed a complaint in ejectment against Kim Carruth in the matter of James Patterson, Sr. v. Kim Carruth in the Court of Common Pleas of the First Judicial District of Pennsylvania, which assigned

FILED  
AUG 23 2018  
By KATE BARKMAN, Clerk  
Dep. Clerk

Case Number 170901977 to the ejectment action. (See Motion Exhibit A, which is attached herewith and made a part hereof.)

6. On March 19, 2018, Defendant James Patterson was awarded possession of 108 West Godfrey Avenue, the subject premises, after a nonjury trial before Honorable John M. Younge. (See Motion Exhibit B, which is attached herewith and made a part hereof.)

7. As a result of the Court's ruling in the ejectment matter, James Patterson, Sr. is the rightful owner of 108 West Godfrey Avenue, the subject property.

8. There was no appeal filed challenging the ruling in the state court matter.

9. On May 16, 2018, Plaintiff Carruth filed the "complaint" in the instant matter.

10. On May 17, 2018, Plaintiff Carruth filed Notice of Removal of the ejectment action one day prior to the 60<sup>th</sup> day on which, pursuant to Judge Younge's Order, James Patterson, Sr. was permitted to seek possession or file the Writ of Possession.

11. The pleading filed by Carruth is described as a "Complaint Under Protective Order – FRCP Rule 26(c)(A) special matter of interest to note subrogation under equity federal question(s)" and "CLAIMANT'S RIGHTS OF SUBROGATION UNDER EQUITY TO REVOKE INTERLOPERS FROM TRUST PASSING".

12. After an exhaustive search of state statutory law, state caselaw, federal statutory law and federal caselaw, there is no legally cognizable claim as alleged by Carruth in either state or federal jurisdiction.

WHEREFORE, it is respectfully requested that this Honorable Court dismiss the pending complaint filed by Kim Carruth.



ISAAC H. GREEN, ESQUIRE

*Attorney for Defendant  
James Patterson, Sr.*

# **EXHIBIT A**



**First Judicial District of Pennsylvania  
Trial Division-Civil  
DOCKET REPORT**

**CASE NUMBER****170901977****CASE CAPTION****PATTERSON VS CARRUTH****FILING DATE: 19-SEP-2017****COURT: RL****JURY: N****CASE TYPE: EJECTMENT****STATUS: NOT OF REMOVAL TO US DIST CT****RELATED CASES:*****Parties:***

| Seq. No. | Assoc. With | Expiration Date | Party Type | ID       | Party Name/ Address  |
|----------|-------------|-----------------|------------|----------|--|
| 1        |             |                 | PLF        | @9522828 | PATTERSON SR, JAMES L.<br>110 W GODFREY AVE<br>PHILADELPHIA, PA 19120<br>(215)549-6979 |
| 2        | 6           |                 | DFT        | @9522829 | CARRUTH, KIM<br>108 W GODFREY AVE<br>PHILADELPHIA, PA 19120                            |
| 3        |             |                 | TL         | J477     | SHIRDAN-HARRIS, LISETTE<br>692 CITY HALL<br>PHILADELPHIA, PA 19107                     |
| 4        |             |                 | JUDG       | J915     | JUDGE, SUPERVISING<br>656 CITY HALL<br>PHILADELPHIA, PA 19107                          |
| 5        |             |                 | JUDG       | J541     | FLETMAN, ABBE F.<br>229A CITY HALL<br>PHILADELPHIA, PA 19107<br>(215)686-2636          |
| 6        |             |                 | PROS       | P36344   | CARRUTH, KIM<br>108 W GODFREY AVE<br>PHILADELPHIA, PA 19120<br>(215)426-2871           |

***Docket Entries:***

| Filing Date/Time     | Docket Entry | Date Entered |
|----------------------|--------------|--------------|
| 19-SEP-2017 12:14:34 | ACTIVE CASE  | 19-SEP-2017  |





**First Judicial District of Pennsylvania  
Trial Division-Civil**

|                      |  |                        |
|----------------------|--|------------------------|
| 19-SEP-2017 12:17:37 | COMMENCEMENT OF CIVIL ACTION   | 19-SEP-2017            |
|                      |  | PATTERSON SR, JAMES L. |
| 19-SEP-2017 12:17:37 | COMPLAINT FILED NOTICE GIVEN   | 19-SEP-2017            |
|                      |  | PATTERSON SR, JAMES L. |
|                      | COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.  |                        |
| 19-SEP-2017 12:17:37 | SHERIFF'S SURCHARGE 1 DEFT   | 19-SEP-2017            |
| 19-SEP-2017 16:13:45 | WAITING TO LIST CASE MGMT CONF   | 19-SEP-2017            |
| 06-OCT-2017 17:22:41 | AFFIDAVIT OF SERVICE FILED   | 06-OCT-2017            |
|                      |  | PATTERSON SR, JAMES L. |
|                      | OF COMPLAINT BY PERSONAL SERVICE UPON KIM CARRUTH ON 10/5/2017 AT 108 W GODFREY AVE AT 6:46 P.M.   |                        |
| 10-OCT-2017 16:20:54 | ANSWER TO COMPLAINT FILED  | 10-OCT-2017            |
|                      |  | CARRUTH, KIM           |
| 10-OCT-2017 16:39:59 | MOT-PROCEED IN FORMA PAUPERIS  | 10-OCT-2017            |
|                      |  | CARRUTH, KIM           |
|                      | 22-17105122 MOTION TO PROCEED INFORMA PAUPERIS FILED.  |                        |
| 11-OCT-2017 15:26:27 | MOTION ASSIGNED  | 11-OCT-2017            |
|                      |  |                        |
|                      | 22-17105122 MOT-PROCEED IN FORMA PAUPERIS ASSIGNED TO JUDGE: JUDGE, SUPERVISING . ON DATE: OCTOBER 11, 2017  |                        |
| 11-OCT-2017 16:32:39 | MOTION TO STRIKE   | 11-OCT-2017            |
|                      |  | CARRUTH, KIM           |
|                      | 39-17105139 MOTION TO STRIKE FILED. RESPONSE DATE 10-31-17.  |                        |
| 12-OCT-2017 18:01:46 | ORDER ENTERED/236 NOTICE GIVEN   | 12-OCT-2017            |
|                      |  | FOX, IDEE C.           |
|                      | 22-17105122 IT IS ORDERED THAT: 1. PETITIONER BE PERMITTED TO PROCEED WITHOUT PAYING THE COSTS OF THIS PROCEEDING. 2. PETITIONER BE PERMITTED TO OBTAIN SERVICE OF THE PAPERS FILED WITHOUT COSTS. 3. PETITIONER BE PERMITTED TO PROCEED IN FORMA PAUPERIS AS TO ANY ADDITIONAL COSTS WHICH ACCRUE IN THE COURSE OF THIS PROCEEDING. |                        |



**First Judicial District of Pennsylvania  
Trial Division-Civil**

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4. IF THERE IS A MONETARY RECOVERY BY JUDGMENT OR SETTLEMENT IN FAVOR OF THE PARTY PERMITTED TO PROCEED IN FORMA PAUPERIS, THE EXONERATED FEES AND COSTS SHALL BE TAXED AS COSTS AND PAID TO THE OFFICE OF JUDICIAL RECORDS BY THE PARTY PAYING THE MONETARY RECOVERY. 5. PETITIONER HAS A CONTINUING OBLIGATION TO INFORM THE COURT OF ANY IMPROVEMENT IN PARTY'S FINANCIAL CIRCUMSTANCES THAT WILL ENABLE THE PARTY TO PAY COSTS. 6. FILING PARTY MUST OBTAIN ATTESTED COPIES OF THE ORIGINAL PLEADING FOR SERVICE. IF MORE THAN THIRTY (30) DAYS HAS EXPIRED, THE PLEADING MUST BE REINSTATED FIRST. ...BY THE COURT; FOX, J. 10-12-17

**12-OCT-2017 18:01:47 NOTICE GIVEN UNDER RULE 236 13-OCT-2017**

NOTICE GIVEN ON 13-OCT-2017 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 12-OCT-2017.

**06-NOV-2017 12:59:55 MOTION ASSIGNED 06-NOV-2017**

39-17105139 MOTION TO STRIKE ASSIGNED TO JUDGE: FLETMAN, ABBE F. ON DATE: NOVEMBER 06, 2017

**09-NOV-2017 10:40:33 ORDER ENTERED/236 NOTICE GIVEN 09-NOV-2017  
FLETMAN, ABBE F.**

39-17105139 AND NOW, THIS 8TH DAY OF NOVEMBER, 2017, UPON CONSIDERATION OF DEFENDANT'S MOTION TO STRIKE AND ANY REQUEST, IT IS HEREBY ORDERED THAT A HEARING IN THE ABOVE-CAPTIONED MATTER IS SCHEDULED FOR DECEMBER 20TH, 2017, AT 10:00 AM IN COURTROOM 426, CITY HALL, PHILADELPHIA, PA. THE PETITIONER SHALL SERVE A COPY OF HER MOTION AND THIS ORDER UPON PLAINTIFF AND ALL INTERESTED PARTIES BY PERSONAL SERVICE OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE MOTION MAY BE DISMISSED IF PETITIONER FAILS TO PROVE SERVICE IN ACCORDANCE WITH THIS ORDER. ...BY THE COURT: FLETMAN, J., 11/9/17

**09-NOV-2017 10:40:34 NOTICE GIVEN UNDER RULE 236 13-NOV-2017**

NOTICE GIVEN ON 13-NOV-2017 OF ORDER ENTERED/236 NOTICE GIVEN ENTERED ON 09-NOV-2017.

**09-NOV-2017 10:49:53 MOTION HEARING SCHEDULED 09-NOV-2017**

39-17105139 HEARING SCHEDULED FOR 12/20/17 AT 10:00 IN 426 PER JUDGE'S ORDER ISSUED 11/8/17





**First Judicial District of Pennsylvania  
Trial Division-Civil**

|                      |  |  |
|----------------------|--|--|
| 11-NOV-2017 00:30:07 | NOTICE GIVEN   | 11-NOV-2017  |
| 04-DEC-2017 10:14:46 | LISTED FOR CASE MGMT CONF  | 04-DEC-2017  |
| 06-DEC-2017 00:30:14 | NOTICE GIVEN   | 06-DEC-2017  |
| 13-DEC-2017 15:52:31 | PRAECIPE TO SUPPL/ATTACH FILED   | 13-DEC-2017<br>CARRUTH, KIM<br>39-17105139 PRAECIPE TO SUPPLEMENT/ATTACH RE: MOTION TO STRIKE<br>FILED. (FILED ON BEHALF OF KIM CARRUTH)   |
| 15-DEC-2017 00:30:08 | NOTICE GIVEN   | 15-DEC-2017  |
| 15-DEC-2017 00:30:08 | NOTICE GIVEN   | 15-DEC-2017  |
| 21-DEC-2017 10:00:01 | ORDER ENTERED/236 NOTICE GIVEN   | 21-DEC-2017<br>FLETMAN, ABBE F.<br>39-17105139 IT IS HEREBY ORDERED THAT THE MOTION IS DENIED. ...BY THE<br>COURT: FLETMAN, J., 12/20/2017 |
| 21-DEC-2017 10:00:02 | NOTICE GIVEN UNDER RULE 236  | 21-DEC-2017  |
|                      | NOTICE GIVEN ON 21-DEC-2017 OF ORDER ENTERED/236 NOTICE GIVEN<br>ENTERED ON 21-DEC-2017. |  |
| 18-JAN-2018 11:22:25 | WAITING TO LIST CASE MGMT CONF   | 18-JAN-2018  |
| 25-JAN-2018 12:35:31 | LISTED FOR CASE MGMT CONF  | 25-JAN-2018  |
| 27-JAN-2018 00:30:10 | NOTICE GIVEN   | 27-JAN-2018<br>                                       |
| 13-FEB-2018 09:13:12 | CASE MGMT CONFERENCE COMPLETE  | 13-FEB-2018  |



**First Judicial District of Pennsylvania  
Trial Division-Civil**

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LAWLOR, BRIAN

**13-FEB-2018 09:13:12 CASE MANAGEMENT ORDER ISSUED 13-FEB-2018**

CASE MANAGEMENT ORDER EJECTION - THIS MATTER WILL BE SCHEDULED FOR A TRIAL DATE IN THE MARCH 2018\_POOL TRIAL READY POOL. THIS MATTER IS SUBJECT TO "NEXT-DAY" CALL TO TRIAL, EFFECTIVE THE FIRST MONDAY OF THE TRIAL POOL MONTH. ALL COUNSEL AND PARTIES MUST NOTIFY THE COURT IN WRITING OF ANY SCHEDULING CONFLICTS, INCLUDING TRIAL ATTACHMENTS AND PRE-PAID VACATIONS, NO LESS THAN FIVE (5) DAYS BEFORE THE START OF THE TRIAL POOL MONTH, AND ARE UNDER A CONTINUING OBLIGATION TO NOTIFY THE COURT OF ANY SUBSEQUENT TRIAL ATTACHMENTS DURING THE TRIAL POOL MONTH. THE COURT WILL NOT RECOGNIZE ANY UNTIMELY CONFLICT NOTIFICATIONS. FAILURE TO NOTIFY THE COURT OF ANY SCHEDULING CONFLICTS WILL RESULT IN THE ISSUANCE OF APPROPRIATE SANCTIONS. ALL MOTIONS IN LIMINE SHALL BE FILED IN ACCORDANCE WITH ELECTRONIC FILING PROCEDURES NOT LATER THAN FIFTEEN (15) DAYS PRIOR TO THE START OF TRIAL. RESPONDING PARTY SHALL HAVE TEN (10) DAYS THEREAFTER TO FILE A RESPONSE. REQUESTS FOR A CONTINUANCE MUST BE MADE BY WAY OF MOTION FOR EXTRAORDINARY RELIEF AND MAY BE MADE ONLY UNDER EXIGENT CIRCUMSTANCES. ANY WRITTEN CORRESPONDENCE TO THE COURT MUST BE DIRECTED TO THE HONORABLE LISETTE SHIRDAN-HARRIS, TEAM LEADER, VIA THE EXISTING CASE SECTION OF THE CIVIL ELECTRONIC FILING SYSTEM UNDER FILING CATEGORY "CONFERENCE SUBMISSIONS," FACSIMILE (215-686-5137) OR U.S. MAIL (ROOM 622, CITY HALL, PHILADELPHIA PA 19107). ALL PARTIES MUST BE COPIED ON ALL CORRESPONDENCE TO THE COURT. ...BY THE COURT: SHIRDAN-HARRIS, TEAM LEADER

**13-FEB-2018 09:13:13 NOTICE GIVEN UNDER RULE 236 13-FEB-2018**

NOTICE GIVEN ON 13-FEB-2018 OF CASE MANAGEMENT ORDER ISSUED ENTERED ON 13-FEB-2018.

**13-FEB-2018 09:13:26 LISTED IN TRIAL READY POOL 13-FEB-2018**

**02-MAR-2018 13:38:13 WAITING TO LIST FOR TRIAL**





First Judicial District of Pennsylvania  
Trial Division-Civil

02-MAR-2018 13:50:25 LISTED FOR TRIAL

02-MAR-2018

02-MAR-2018 13:50:47 NOTICE GIVEN

02-MAR-2018

THE ABOVE CAPTIONED MATTER HAS BEEN SPECIALLY LISTED FOR TRIAL ON Monday, March 19, 2018 IN CITY HALL COURTROOM 483. THE FOLLOWING ATTORNEYS ARE ATTACHED FOR TRIAL UNTIL THE CONCLUSION OF THIS TRIAL: . TRIAL IS EXPECTED TO LAST 1 DAYS. BY THE COURT: LISETTE SHIRDAN-HARRIS, 02-MAR-2018

02-MAR-2018 13:50:48 NOTICE GIVEN UNDER RULE 236

02-MAR-2018

NOTICE GIVEN ON 02-MAR-2018 OF NOTICE GIVEN ENTERED ON 02-MAR-2018.

06-MAR-2018 00:30:10 NOTICE GIVEN

06-MAR-2018

12-MAR-2018 12:46:19 ANSWER TO COMPLAINT FILED

12-MAR-2018

CARRUTH, KIM

AMENDED ANSWER TO PLAINTIFF'S COMPLAINT FILED BY DEFENDANT KIM CARRUTH.

20-MAR-2018 16:04:53 FINDING FOR PLAINTIFF

20-MAR-2018

YOUNGE, JOHN M.

FINDING IN FAVOR OF PLTF AND AGAINST DEFTS. PLTF IS AWARDED POSSESSION OF 108 W GODREY AVE, PHILA PA 19120. PLTF SHALL NOT BE PERMITTED TO SEEK POSSESSION AND/OR FILE A WRIT OF POSSESSION UNTIL AFTER 60 DAYS FROM THE DATE THAT THIS ORDER IS ENTERED ON THE DOCKET. BY THE COURT ...YOUNGE,J 3/19/18

20-MAR-2018 16:04:54 NOTICE GIVEN UNDER RULE 236

23-MAR-2018

NOTICE GIVEN ON 23-MAR-2018 OF FINDING FOR PLAINTIFF ENTERED ON 20-MAR-2018.

17-MAY-2018 15:35:52 CASE REACTIVATED

17-MAY-2018

17-MAY-2018 15:35:53 NOT OF REMOVAL TO US DIST CT

17-MAY-2018  
CARRUTH, KIM



**First Judicial District of Pennsylvania  
Trial Division-Civil**

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NOTICE OF REMOVAL TO THE U.S. (EASTERN) DISTRICT COURT UNDER 18-CV-2016.

**21-MAY-2018 12:40:50 PRAECIPE - WRIT OF POSSESSION**

**21-MAY-2018**

**PATTERSON SR, JAMES L.**

PRAECIPE FOR WRIT OF POSSESSION (RE) FILED. WRIT OF POSSESSION.

SUBJECT PREMISES: 108 WEST GODFREY AVENUE, PHILADELPHIA PA 19120.

**18-JUN-2018 16:30:46 CORRECTIVE ENTRY**

**18-JUN-2018**

THE WRIT OF POSSESSION FILED BY PLAINTIFF ON 5/21/18 WAS DOCKETED IN ERROR. DUE TO THE NOTICE OF REMOVAL TO US DISTRICT COURT FILED ON 5/17/18, THIS COURT NO LONGER HAD JURISDICTION TO ALLOW FILINGS ONTO THE CCP DOCKET IN THIS MATTER. THE SHERIFF HAS BEEN NOTIFIED OF THIS DOCKETING ERROR. BRK - OJR

**22-JUN-2018 15:41:05 RECORD MAILED/TRANSMITTED**

**22-JUN-2018**

RECORD MAILED TO U.S. DISTRICT COURT.

UPS# IZ 5E3 003 03 1024 701 9.

**26-JUN-2018 11:49:01 WRIT RETURN FILED**

**26-JUN-2018**

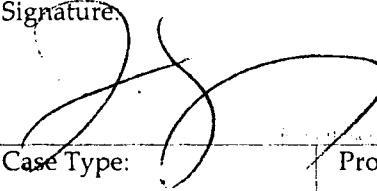
LEVY ABANDONED - WRIT NUMBER 231904

**\*\*\* End of Docket \*\*\***



## **EXHIBIT B**

Court of Common Pleas of Philadelphia County  
 Trial Division - Civil  
**TRIAL WORK SHEET**

|  |   |   |  |
|--|---|---|--|
| Judge's Name:<br><b>JOHN M YOUNGE</b>        | Judge's I.D.:<br><b>J411</b>  | Signature:  |  |
| Caption:<br><b>PATTERSON VS CARRUTH</b>      |   | Case Type:<br><b>EJECTMENT</b>  | Program:<br><b>RENT, LEASE &amp; EJECTMENT</b> |
| Court Term and Number:<br><b>#1709-01977</b> | If Consolidated, Court Term and Number:                                       |   |  |
| Trial Date:<br><b>19-MAR-2018</b>            | <input type="checkbox"/> Jury<br><input checked="" type="checkbox"/> Non-Jury | Total Amount:   | Number of Days:<br><b>1</b>                    |
|  |   |   | Disposition Date:<br><b>19-MAR-2018</b>        |
|  |   |   | Date Sheet Prepared:<br><b>19-MAR-2018</b>     |

## Full Description of Disposition (to be entered Verbatim on the Docket)

Finding in favor of the Plaintiff(s), James Lee Patterson, Sr., and James Lee Patterson, Jr., and against the Defendant(s), All Occupants of 108 West Godfrey Avenue, Philadelphia, Pennsylvania 19120. The Plaintiff(s) is/are awarded possession of 108 West Godfrey Avenue, Philadelphia, Pennsylvania 19120. The Plaintiff shall not be permitted to seek possession and/or to file a writ of possession until after sixty (60) days from the date that this order is entered on the docket.

|  |   |   |
|--|---|---|
| <input type="checkbox"/> Default Judgment/Court Ordered              | <input type="checkbox"/> Jury Verdict for Plaintiff                                 | <input type="checkbox"/> Other (explain)  |
| <input type="checkbox"/> Directed Verdict                            | <input type="checkbox"/> Jury Verdict for Defendant                                 | <b>Patterson Vs Carruth-WSFFP</b><br><br><b>17090197700038</b> |
| <input type="checkbox"/> Discontinuance Ordered                      | <input type="checkbox"/> Mistrial   |   |
| <input type="checkbox"/> Transferred to binding arbitration          | <input type="checkbox"/> Hung Jury  |   |
| <input type="checkbox"/> Finding for Defendant (Non-Jury)            | <input type="checkbox"/> Non-Pros entered   |   |
| <input checked="" type="checkbox"/> Finding for Plaintiff (Non-Jury) | <input type="checkbox"/> Non-Suit entered   |   |
| <input type="checkbox"/> Damages Assessed                            | <input type="checkbox"/> Settled prior to assignment for trial (Team Leaders, only) |   |
| <input type="checkbox"/> Judgment entered by agreement               | <input type="checkbox"/> Settled after assignment for trial                         |   |
| <input type="checkbox"/> Judgment entered                            | <input type="checkbox"/> prior to jury selection                                    |   |
| <input type="checkbox"/> Judgment satisfied                          | <input type="checkbox"/> after jury sworn   |   |
|  |   |   |

**DOCKETED  
COMPLEX LITIGATION CENTER**  
**MAK 8 6 2018**  
**J. STEWART**

JAMES LEE PATTERSON SR  
110 W GODFREY AVE  
PHILADELPHIA, PA 19120

PATTERSON VS CARRUTH  
170901977

# **EXHIBIT C**

eRecorded in Philadelphia PA Doc Id: 53268385  
09/21/2017 10:53 AM Page 1 of 5 Rec Fee: \$252.00  
Receipt#: 17-97831  
Records Department Doc Code: D  
State RTT: \$730.00 Local RTT: \$2,263.00

Return To:

Michelle Mills  
1st Equity National Title  
538 Broadhollow Road, Suite 315  
Melville, NY 11747

Order Number:

FE-116503-PA

Prepared By:

Kristin Marsalese, Esq.  
PC Law Associates  
200 Fleet Street, Suite 6100  
Pittsburgh, PA 15220  
PA Bar ID: 87144

Tax/Parcel ID No.: 611282800

## Special Warranty Deed

This Indenture made this 28 day of August, 2017,

Between

**BANK OF AMERICA, N.A.,**  
party of the first part, ("Grantor")

and

**JAMES LEE PATTERSON, JR., and JAMES LEE PATTERSON SR.**, as joint tenants with  
right of survivorship, party of the second part, ("Grantee")

**WITNESSETH**, that the said party of the first part, for and in consideration of the sum of Seventy-Three Thousand and No/100 Dollars (\$73,000.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part and his/her/their heirs/successors and assigns, in fee simple, the following described lands, situate, lying, and being in the City of Philadelphia, Commonwealth of Pennsylvania:

All that certain lot or piece of ground with the buildings and improvements thereon erected, hereditaments and appurtenances, described according to a survey and plan thereof made by Joseph F. Delaney, Esquire, Surveyor and Regulator of the 5th District, dated 6/13/1931, as follows, to wit:

Situate on the Southerly side of Godfrey Avenue (80 feet wide) at the distance of 244 feet 11 inches Westwardly from the Westerly side of front street (80 feet wide) in the 61st Ward of the City of Philadelphia.

**Return To:**

Michelle Mills  
1st Equity National Title  
538 Broadhollow Road, Suite 315  
Melville, NY 11747

**Order Number:**  
FE-116503-PA

**Prepared By:**

Kristin Marsalese, Esq.  
PC Law Associates  
200 Fleet Street, Suite 6100  
Pittsburgh, PA 15220  
PA Bar ID: 87144

Tax/Parcel ID No.: 611282800

## Special Warranty Deed

This Indenture made this 28 day of August, 2017,

Between

**BANK OF AMERICA, N.A.,**  
party of the first part, ("Grantor")

and

**JAMES LEE PATTERSON, JR., and JAMES LEE PATTERSON SR.,** as joint tenants with  
right of survivorship, party of the second part, ("Grantee")

**WITNESSETH**, that the said party of the first part, for and in consideration of the sum of Seventy-Three Thousand and No/100 Dollars (\$73,000.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part and his/her/their heirs/successors and assigns, in fee simple, the following described lands, situate, lying, and being in the City of Philadelphia, Commonwealth of Pennsylvania:

All that certain lot or piece of ground with the buildings and improvements thereon erected, hereditaments and appurtenances, described according to a survey and plan thereof made by Joseph F. Delaney, Esquire, Surveyor and Regulator of the 5th District, dated 6/13/1931, as follows, to wit:

Situate on the Southerly side of Godfrey Avenue (80 feet wide) at the distance of 244 feet 11 inches Westwardly from the Westerly side of front street (80 feet wide) in the 61st Ward of the City of Philadelphia.

Containing in front or breadth on the said Godfrey Avenue 15 feet 2 inches and extending of that width in length or depth Southwardly between parallel lines at right angles with the said Godfrey Avenue, 70 feet to the center of a certain 12 feet wide driveway which extends Westwardly from the said front street and communicates with another 12 feet wide driveway which extends Northwardly into the said Godfrey Avenue.

The improvements thereon being known as 108 West Godfrey Avenue, Philadelphia, PA 19120.

**Parcel No. 611282800**

BEING the same property conveyed to BANK OF AMERICA, N.A., by Deed from JEWELL WILLIAMS, SHERIFF of the COUNTY OF PHILADELPHIA, recorded July 24, 2017 in Instrument/Case No. 53242701.

TOGETHER with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, watercourses, rights (including mineral rights), liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the revisions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of Grantor, as well at law as in equity, of, in, and to the same.

TO HAVE AND TO HOLD the said lot or piece of ground described above, with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, his/her/their heirs-successors and assigns, to and for the only proper use and behoof of the said Grantee, his/her/their heirs-successors and assigns forever.

NOTICE – THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE/HAD THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

**NOTICE** - THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, IS FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN

THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966, AS AMENDED 1980, Oct.10, P.L. 874, No. 156 § 1.



JAMES LEE PATTERSON, JR., Grantee



JAMES LEE PATTERSON SR., Grantee

**AND THE SAJD** Grantor will only warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of those persons claiming by, through or under Grantor, but not otherwise.

In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

This instrument prepared from information provided by the parties. PC Law Associates makes no representation as to title or accuracy.

THIS SPACE INTENTIONALLY LEFT BLANK

Executed as of August 28, 2017 to be effective as of September 15, 2017.

In witness whereof, the said party of the first part has hereunto set his/her/their hand(s) and seal(s).

Sealed and Delivered in the presence of:

BANK OF AMERICA, N.A.

Cory Klapp 8-28-17

By: Cory Donovan Klapperich

Its: Assistant Vice President (AVP)

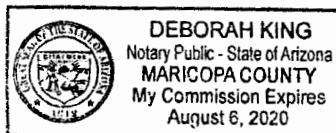
State: Arizona )

County of: Maricopa ) ss:

Be it remembered that on this 28 day of August, 2017, personally came before me, the Subscriber, a Notary Public for the State and County Aforesaid, Cory Donovan Klapperich, as AVP of **BANK OF AMERICA, N.A.**, party to this Indenture, and acknowledged this Indenture to be his/her/their Act and Deed.

In witness whereof, I hereunto set my hand and official seal.

(seal)



I hereby certify that the address of the above-named Grantee is:

1218 Bainbridge Street  
Philadelphia, PA 19147

  
(seal)  
Name: Jason Alvarez

Deborah King 8/28/17  
Notary Public/Notarial Officer  
Deborah King  
My commission expires: August 6, 2020

I hereby certify that the tax billing address of the above-named Grantee is:

1218 Bainbridge Street  
Philadelphia, PA 19147

  
(seal)  
Name: Jason Alvarez

|   |  |   |
|---|--|---|
| <b>PHILADELPHIA REAL ESTATE<br/>TRANSFER TAX CERTIFICATION</b>  |  | BOOK NO. _____<br>PAGE NO. _____  |
|   |  | DATE RECORDED _____   |
|   |  | CITY TAX PAID _____   |
| <p>Complete each section and file in duplicate with Recorder of Deeds when (1) the full consideration/value is/is not set forth in the deed, (2) when the deed is with consideration, or by gift, or (3) a tax exemption is claimed. If more space is needed, attach additional sheet(s).</p> |  |   |
| <b>A. CORRESPONDENT — All inquiries may be directed to the following person:</b>  |  |   |
| NAME<br><i>Michelle Mills</i>   |  | TELEPHONE NUMBER:<br>AREA CODE (631) 694-9595   |
| STREET ADDRESS<br><i>538 Broadhollow Road, ste 315 Melville</i>   |  | CITY<br><i>Melville</i>   |
|   |  | STATE<br><i>NY</i>  |
|   |  | ZIP CODE<br><i>11747</i>  |
| <b>B. TRANSFER DATA</b>   |  |   |
| GRANTOR(S)/LESSOR(S)<br><i>Bank of America, N.A.</i>  |  | DATE OF ACCEPTANCE OF DOCUMENT:<br>GRANTEE(S)/LESSEE(S)<br><i>James Lee Patterson Jr. &amp; James Lee Patterson Jr.</i> |
| STREET ADDRESS<br><i>2595 W. Chandler Boulevard</i>   |  | STREET ADDRESS<br><i>108 West Godfrey Avenue</i>  |
| CITY<br><i>Chandler</i>   |  | CITY<br><i>Philadelphia</i>   |
| STATE<br><i>AZ</i>  |  | STATE<br><i>PA</i>  |
|   |  | ZIP CODE<br><i>85224</i>  |
| <b>C. PROPERTY LOCATION</b>   |  |   |
| STREET ADDRESS<br><i>108 W Godfrey Avenue</i>   |  | CITY, TOWNSHIP, BOROUGH<br><i>Philadelphia</i>  |
| COUNTY<br><i>Philadelphia</i>   |  | SCHOOL DISTRICT<br><i>Philadelphia</i>  |
|   |  | TAX PARCEL NUMBER<br><i>61-1282800</i>  |
| <b>D. VALUATION DATA</b>  |  |   |
| 1. ACTUAL CASH CONSIDERATION<br><i>\$ 73,000.00</i>   |  | 2. OTHER CONSIDERATION<br><i>+ 0.00</i>   |
|   |  | 3. TOTAL CONSIDERATION<br><i>= \$ 73,000.00</i>   |
| 4. COUNTY ASSESSED VALUE<br><i>\$ 118,500.00</i>  |  | 5. COMMON LEVEL RATIO FACTOR<br><i>x 1.01</i>   |
|   |  | 6. FAIR MARKET VALUE<br><i>= \$ 119,685.00</i>  |
| <b>E. EXEMPTION DATA</b>  |  |   |
| 1A. AMOUNT OF EXEMPTION<br><i>0</i>   |  | 1B. PERCENTAGE OF INTEREST CONVEYED<br><i>100%</i>  |
| <b>2. Check Appropriate Box Below for Exemption Claimed</b>   |  |   |
| <input type="checkbox"/> Will or intestate succession _____<br><small>(NAME OF DECEDENT)</small> _____<br><small>(ESTATE FILE NUMBER)</small> _____   |  |   |
| <input type="checkbox"/> Transfer to Industrial Development Agency.   |  |   |
| <input type="checkbox"/> Transfer to agent or straw party. (Attach copy of agency/straw party agreement).   |  |   |
| <input type="checkbox"/> Transfer between principal and agent. (Attach copy of agency/straw trust agreement). Tax paid prior deed \$ _____.   |  |   |
| <input type="checkbox"/> Transfers to the Commonwealth, the United States, and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (Attach copy of resolution).   |  |   |
| <input type="checkbox"/> Transfer from mortgagor to a holder of a mortgage in default. Mortgage Book Number _____, Page Number _____.<br>Mortgagee (grantor) sold property to Mortgagor (grantee) (Attach copy of prior deed).  |  |   |
| <input type="checkbox"/> Corrective deed (Attach copy of the prior deed).   |  |   |
| <input type="checkbox"/> Other (Please explain exemption claimed, if other than listed above.) _____<br><small>_____<br/>_____</small>  |  |   |
| <i>Under penalties of law or ordinance, I declare that I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.</i>  |  |   |
| SIGNATURE OF CORRESPONDENT OR RESPONSIBLE PARTY<br><i>Michelle Mills</i>  |  | DATE<br><i>9-15-2017</i>  |
| (SEE REVERSE)   |  |   |

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                              |   |                                     |
|------------------------------|---|-------------------------------------|
| <b>KIM CARRUTH,</b>          | : |                                     |
| <b>Plaintiff,</b>            | : |                                     |
| <b>v.</b>                    | : | <b>Civil Action No. 18-CV-02061</b> |
|                              | : |                                     |
| <b>JAMES PATTERSON, SR.,</b> | : |                                     |
| <b>Defendant.</b>            | : |                                     |

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT  
JAMES PATTERSON, SR.'S MOTION TO DISMISS**

**I. INTRODUCTION**

According to the complaint, Plaintiff filed this action on or about May 15, 2018.

The claims for equitable relief set forth in the complaint state a litany of statements which fall short of containing “a short and plain statement of grounds upon which the Court’s jurisdiction depends [and] a short and plain statement of the claim showing that the pleader is entitled to relief”. While there appears to be a “demand for judgment for relief” sought by Plaintiff, there is no clear statement of the specific relief in equity sought by Plaintiff.

**II. STATEMENT OF THE COMPLAINT’S ALLEGATIONS  
AND RESPONSE OF DEFENDANT**

**A. There is No Basis for Federal Jurisdiction**

In an apparent attempt to allege a claim of federal jurisdiction for purposes of this matter, Plaintiff alleges on page 3 through 4 the alleged basis for jurisdiction for purposes of this matter. Plaintiff states on page 4 as follows:

“This Court also has jurisdiction over this matter pursuant to 35 U.S.C. 31 inclusive with 28 U.S.C. 2201 and the Uniform Declaratory Judgment Act, U.S. Code 2201, Chapter 151 of United States Code and Chapter 85 of Title 28 1338.”

However, exhaustive research of legislative history regarding 35 U.S.C. 31 reveals that this statute was repealed on November 29, 1999. (See Public Law 106-113, Sec. 1000(a)(9), 113 Stat. 1501A-580 (S. 1948 Sec. 4715(b).) Moreover, this legislation, as formerly codified, was Title 35 – Patents, Section 31 – Regulations for Agents and Patents. There is no mention of a patent issue or any other form of intellectual property claim in the complaint at all.

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of an action for “lack of subject matter jurisdiction”. (See Fed. R. Civ. P. 12(b)(1).) A Rule 12(b)(1). motion can challenge the sufficiency of the pleadings to establish jurisdiction (facial attack) or a lack of any factual support for subject matter jurisdiction despite the pleading’s sufficiency (factual attack). (See Grondal v. United States, 2012 U.S. Dist. Lexis 19398 at \*11-13 (E.O. Wash., Feb. 16, 2012) (Quackenbush, J.).) For a facial attack, all allegations are accepted as true. Id. For a factual attack, evidence outside the pleadings needed to resolve factual disputes as to jurisdiction may be considered. (See Assoc. of Am. Med. Coll. v. United States, 217 F.3d 770, 778 (9<sup>th</sup> Cir. 2000) Plaintiff has the burden of establishing jurisdiction. (See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994).) Inasmuch as Plaintiff alleges jurisdiction based on a repealed statute, Plaintiff cannot establish jurisdiction under Kokkonen.

Guided by the foregoing, Plaintiff cannot carry her burden of establishing subject matter jurisdiction under any federal statute. As such, the complaint must be dismissed as there is no federal subject matter jurisdiction in law or equity stated in the complaint.

B. The Complaint Must Be Dismissed for Failure to State a Claim Upon Which Relief May be Granted

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the complaint may be dismissed for “failure to state a claim upon which relief can be granted”. In order to survive a motion to dismiss pursuant to Rule 12(b)(6), the complaint must state, with clarity, “a short and plain statement of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests”. (See Conley v. Gibson, 355 U.S. 41, 47 (1957).) At minimum, the Plaintiff is obligated to provide “the grounds” of his [her] entitlement to relief”, “[l]abels, conclusions . . . and a formulaic recitation of the cause of action will not do”. (See Papasan v. Allain, 478 U.S. 265, 286 (1986).) Guided by these longstanding principles, the complaint is thoroughly flawed in that its rambling text fails to state a claim upon which relief can be granted under any federal or state law.

The complaint on p. 3 states that “Defendant James Patterson, Sr. d/b/a Interloper” is a party defendant. However, the complaint states no acts committed by “Defendant James Patterson, Sr. d/b/a Interloper” which violated federal or state law. (See Complaint.) There are no facts in this complaint clearly stating what events allegedly occurred and when the events occurred which give rise to a claim for relief.

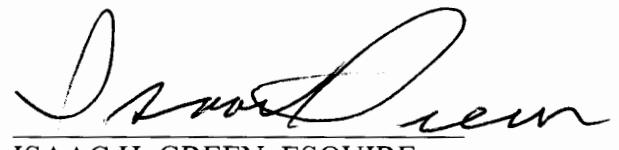
The complaint does, however, include a declaration under penalty of perjury that the foregoing “facts” are true which exposes Plaintiff to criminal liability for making a declaration that baseless allegations against Plaintiff are true. In this connection, a review

of the docket of the complaint in ejectment filed by Mr. Paterson, Sr. and his son, James Patterson, Jr., may shed some light on the reason Carruth removed the state court matter to the federal court system. (See Motion Exhibit A – Docket.) According to the docket report of the First Judicial District of Pennsylvania Trial Division – Civil, James Patterson, Sr. and James Patterson, Jr. filed a complaint in ejectment pro se against Kim Carruth on September 19, 2017, seeking a judgment for possession of the premises known at 108 West Godfrey Avenue in Philadelphia, Pennsylvania. The court docket further reveals that on March 20, 2018, Judge John M. Younge found in favor of Plaintiff James Patterson and against Defendant Kim Carruth and awarded possession of 108 West Godfrey Avenue, Philadelphia, Pennsylvania 19120 to Plaintiff in the state court matter. (Also, see Motion Exhibit B – Trial Work Sheet.) This ruling was not appealed. Carruth filed a notice of removal. On May 21, 2018, the Praecept for Writ of Possession was filed. However, the Sheriff was unable to remove Carruth from the premises due to the removal notice Plaintiff filed prior to execution on the Writ of Possession.

As a result of the filing of the removal notice based on the filing of a meritless federal complaint under review by this Court, Carruth remains in the premises the possession to which she is not legally entitled. Plaintiff is not the rightful, legal owner because James Patterson, Sr. and James Patterson, Jr. purchased the property from Bank of America on August 28, 2017. By virtue of the special warranty deed evidencing this transaction, Plaintiff Carruth has no legally cognizable right to the premises. (See Motion Exhibit C – Special Warranty Deed.) This matter was removed to federal court for the sole purpose of preempting the completion of the ejectment process since there are no clear potentially viable claims stated in Plaintiff's complaint which satisfy the

requirements of Bell Atlantic v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Consequently, the complaint must be dismissed for failure to state a claim for which relief may be granted.

Respectfully submitted,



ISAAC H. GREEN, ESQUIRE

*Attorney for Defendant  
James Patterson, Sr.*

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

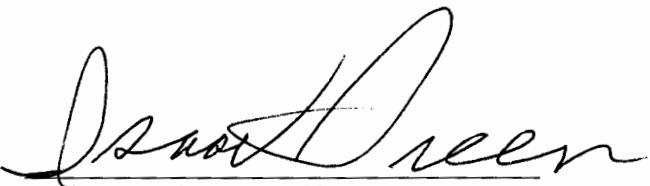
KIM CARRUTH, :  
Plaintiff, :  
v. : Civil Action No. 18-CV-02061  
: :  
JAMES PATTERSON, SR., :  
Defendant. :  

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**CERTIFICATE OF SERVICE**

I, Isaac H. Green, Esquire, hereby certify that a true and correct copy of Defendant's Motion to Dismiss was served via regular mail, postage prepaid, on the following:

Kim Carruth  
108 West Godfrey Avenue  
Philadelphia, PA 19120



ISAAC H. GREEN, ESQUIRE

DATE: August 23, 2018

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIM CARRUTH,  
Plaintiff,  
v.  
JAMES PATTERSON, SR.,  
Defendant.

---

: :  
: : Civil Action No. 18-CV-02061  
: :  
: :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, upon  
consideration of the Motion to Dismiss of James Patterson, Sr. and any response thereto, it is  
hereby ORDERED and DECREED that the motion is GRANTED.

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C. DARNELL JONES, J.